

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,

CASE NO.: 1:16-CR-00224

Plaintiff,

JUDGE PATRICIA A. GAUGHAN

~ VS ~

BOGDAN NICOLESCU,

ANTICIPATORY MOTION FOR OFFICIAL  
TRANSLATION AND ADMISSION OF PRIOR  
INCONSISTENT STATEMENTS

Defendant.

Now comes the Defendant, **BOGDAN NICOLESCU**, by and through counsel, and respectfully moves this Honorable Court to admit as substantive evidence an English translation of the prior inconsistent statement of government witness Valentin Danet and the anticipated prior inconsistent statements of government witnesses Valentin Dima, Catalin Dima and Marius Adrian Matei.

Federal Rule of Evidence 613(b), entitled *Extrinsic Evidence of Prior Inconsistent Statements*, provides: “[e]xtrinsic evidence of a witness’s prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires.” The admission of a prior inconsistent statement is permitted where the testimony provided at trial is “irreconcilably at odds” with the prior statement provided. *United States v. Harris*, 881 F.3d 945, 2018 U.S. App. LEXIS 2793, 2018 FED App. 0025P (6th Cir. 2018) quoting *United States v. Fonville*, 422 F. App’x 473, 481 (6th Cir. 2011).

On Thursday, April 4, 2019 and Friday, April 5, 2019, undersigned counsel was provided with the translated sworn statements and FBI 302 summaries of four

government witnesses - Valentin Danet, Valentin Dima, Catalin Dima and Marius Adrian Matei. The sworn statements are in complete opposition to the FBI interviews and notes contained in the 302s. As an example, Valentin Danet, on February 19, 2019, gave a statement under oath, with his attorney present, to the FBI and Romanian National Police to the effect that he knew nothing about Bayrob fraud or any illegal activity of the Defendants. On February 22, 2019, after receiving proffer protection from the government, Valentin Danet gave a detailed statement inculcating both Defendants; which was meticulously parroted in court before the jury. It is expected that the testimony of the remaining Romanian witnesses will directly inculcate Mr. Nicolescu regarding his involvement in the alleged Bayrob scheme as well. However, the translated statements made under oath just 3 days prior to the FBI and Romanian National Police and provided to undersigned on April 4, 2019, do not inculcate Mr. Nicolescu in any illegal activity and are anticipated to be “irreconcilably at odds” with the witnesses’ testimony at trial.

Pursuant to Fed. R. Evid. 613(b), the prior inconsistent statement of government witnesses Valentin Danet and the anticipated prior inconsistent statements of Valentin Dima, Catalin Dima and Marius Adrian Matei are admissible extrinsic evidence. The witnesses will be given an opportunity on both direct and cross examination to explain the statements; however, due to the gravity of the anticipated testimony, justice requires the admission of the witnesses’ prior inconsistent, signed and sworn statements. To not permit the jury to review the actual prior inconsistent statements as actual evidence would be adverse to Fed. R. Evid. 613(b) and a manifest injustice as the lack of candor of these government witnesses is essential to the defense of Mr. Nicolescu. In addition,

prior to closing argument, the Defendant requests that these statements be translated into English either officially or by U.S. Attorney personnel. These translated statements can then be stipulated to as accurate by all parties

Wherefore, it is respectfully requested that this Honorable Court admit as substantive evidence the prior inconsistent statement of government witness Valentin Danet and the anticipated prior inconsistent statements of government witnesses Valentin Dima, Catalin Dima and Marius Adrian Matei.

Respectfully submitted,

/s/ - Michael J. Goldberg  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>TH</sup> day of April, 2019, a copy of the foregoing has been filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ - Michael J. Goldberg  
**MICHAEL J. GOLDBERG (0040839)**  
*Attorney for Defendant*